

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

FILED

03 DEC 11 PM 12: 51
U.S. DISTRICT COURT
N.D. OF ALABAMA

CHARLIE MAYES,

Plaintiff,

vs.

**PERSONNEL BOARD OF JEFFERSON
COUNTY, ALABAMA,**

Defendant.

Civil Action No. CV-03-JEO-2704-S

ENTERED
[Signature]
DEC 12 2003

MEMORANDUM OPINION

Plaintiff, Charlie Mayes, commenced this action to challenge his termination by defendant, the Personnel Board of Jefferson County, Alabama. Shortly after the action was filed, defendant filed a motion to dismiss Mayes' request for a due process hearing. The Board asserted that Mayes was not an employee holding permanent status on the date of his termination. The Board further claimed that plaintiff was not entitled to seek review of defendant's termination decision, because he did not timely file a notice of appeal. (*Id.* at ¶ 7). The magistrate judge to whom this matter was assigned entered a report on October 31, 2003, recommending that the action be dismissed because plaintiff was a probationary employee on the date of his termination and, therefore, not entitled to invoke the review process provided for "permanent" employees who are terminated.

Plaintiff has filed a "Reply to Magistrate Judge's Report and Recommendation," which the court construes as an objection to the report and recommendation. Plaintiff relies upon the following language from the Order entered by this court on July 8, 2002, in the consolidated class action suits against the Jefferson County Personnel Board *et al.*,¹ in support of his position that the appeal

¹ The lead case is *Ensley Branch of the N.A.A.C.P. v. Seibels*, Civil Action No. CV-74-S-12-S (N.D. Ala.).

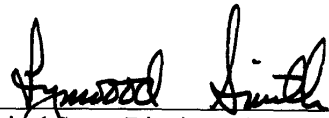
process applies to probationary employees such as himself:

any employee of the Personnel Board of Jefferson County holding permanent status, and who is subject to demotion, suspension, discipline, or termination at the instance of the Receiver, shall be entitled to a due process hearing before a magistrate judge of this court randomly drawn, who shall apply the same standards of review as would otherwise be applied by the Personnel Board in such matters, but for the existence of this court's order.

(Doc. no. 6, at 1-2 (italics in original)).

The court has considered the entire file in this action, including the Magistrate Judge's Report and Recommendation and the plaintiff's reply, and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. The plaintiff's objection was addressed and rejected by the magistrate judge. The court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of this court. In accordance with the recommendation, the defendant's motion to dismiss (doc. 2) is due to be granted. An appropriate order will be entered.

DONE, this the 11th day of December, 2003.


United States District Judge